IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 27

FEDERAL TRADE COMMISSION,

Petitioner,

v.

FRED MEYER, INC., *et. al.*

Respondents ask the Court to deny our motion on the ground that Section 2(d) of the Robinson-Patman Act permits discrimination relating to promotional allowances which would be barred under Section 2(a) relating to price. Such an interpretation would, of itself, open the door to evasion of the Act. However, leaving this point aside respondents have failed completely to come to grips with the main point of our brief. Namely: Neither Sections 2(a) nor 2(d) can be circumvented by practicing the discrimination against different levels in the distribution system. Respondents have no support whatever for the amazing proposition that Section 2(d) permits discrimination between different levels in the distribution system where it is clear that such discrimination is barred by Section 2(a). See, *FTC* v. *Morton Salt Company,* 334 U.S. 37 (1948).

It therefore makes no difference that the examples drawn from our industry arise under 2(a) or 2(d). The brief filed by ACIDA is clearly apposite to the issue the respondent seeks to avoid, if not confuse.

We respectfully request that the motion for leave to file the brief *amicus curiae* be granted.

Respectfully submitted,

MORRIS B. ABRAM
Attorney for ACIDA

JOSEPH H. EINSTEIN,
ROBERT L. BEERMAN,
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
Of Counsel

September 21, 1967